

**LAKE COUNTY BOARD of ADJUSTMENT**  
**February 12, 2014**  
**Lake County Courthouse Room Rm 317**  
**Meeting Minutes**

**MEMBERS PRESENT:** Sue Laverty, Paul Grinde, Don Patterson, Frank Mutch

**STAFF PRESENT:** LaDana Hintz, Robert Costa, Matthew Rohrbach, Lita Fonda

Sue Laverty called the meeting to order at 4:00 pm

**Motion made by Sue Laverty, and seconded by Paul Grinde, to approve the January 8, 2014 meeting minutes. Motion carried, Sue Laverty and Paul Grinde in favor; Frank Mutch and Don Patterson abstained.**

**NEW MOUNTAIN HEIGHTS II CONDITIONAL USE EXTENSION (4:01 pm)**

LaDana Hintz presented the staff memorandum. (See attachments to minutes in the February 2014 meeting file for staff memorandum.) She highlighted condition #22B, which currently talked about a 5-year approval. The letter from the developer's agent talked about not having an end approval date on that. She mentioned it was difficult to keep up with open-ended approvals as things changed. It might be easier to grant a 3-year approval on that condition, like the other conditions, and they could extend it with the rest if they needed to ask for another extension.

Frank checked that the subdivision would be approved for 3 more years and the slope approval would be in line with that. LaDana said they were trying to keep their approvals on a consistent time line. The subdivision approval extension would be considered by the Commissioners.

Sue verified with LaDana that the suggestion was to modify condition #22b for driveway construction to coincide with the 3-year approval rather than being open-ended.

Dave DeGrandpre of Land Solutions spoke on behalf of the applicants. He described the subdivision and the road network and outlined some of the work that had been done to move this project forward. It was taking a long time because of the economy. He outlined benefits he saw for the county from the project. He handed around 2010 tax information from the property and compared it with a couple of nearby properties with improvements. (See attachments to minutes in the February 2014 meeting file for handout.) For expenses, he shared some statistics about the Rollins area, such as the median age of 57.3 years, household size of 2.05 people and almost 56% seasonal/recreational housing in the area.

Dave said they were talking about a conditional use permit for disturbance of steep slopes. This would include erosion control and making sure surface waters weren't impacted with sediment. The approvals currently in place require Best Management Practices and mitigation measures to protect those sorts of things. Those weren't going away. Zoning regulations were still in effect so when individual lots were developed, there were protections in terms of the types of uses. It was a residential subdivision. These things were not going to change. He respectfully asked the Board for the extension. He understood the staff recommendation. There were 2 parts to this. One was approval for disturbance of slopes for the road network as a whole and the other was on individual lots for driveways. They were asking for a 3-

year extension for the roads and a longer extension, forever, for the driveways. He understood that might not sound realistic. The thing was that the time of driveway development was outside of the developer's control, since that was up to the lot owners. Either way the Board chose to go on that would be fine. They would appreciate at least a 3-year extension for the conditional use permit.

Frank saw the stumbling block as being the open-ended approval on driveways. Was there a timeframe that would be acceptable to the developer than wasn't forever? Dave said it was really about convenience for the lot purchasers. Five years would be a step in the right direction. He wondered how staff felt about that. When someone did buy a lot, they would have to get a zoning conformance permit from the County.

Sue asked LaDana why that was included if the driveways were up to the individual purchaser. LaDana explained that the driveways were approved with the subdivision approval. Dave added that the driveway entrance locations on the roadway were included in the approval. They didn't know exactly where every home would be built on these lots. LaDana said they wouldn't know exactly what the driveway would look like either. When someone did come to build, they might even want to change that. They might need to go through some other kind of approval anyway.

*Public comment opened:*

Paul McKenzie: He worked for F. H. Stoltze Land & Lumber Company, an adjoining landowner. They wanted to support the project. They had a lot of experience with New Mountain Heights. It was clear to them that their intention was to move ahead and fully implement this project.

*Public comment closed.*

Don asked if they wanted to do 5 years for the driveway or just open-ended. LaDana said they were asking for open-ended. Currently it said 5 years. Sue said it made sense to her to tie it to 3 years, so it all had the same timeframe. Ultimately, if it were up to the individual property owner, they would come to the County anyway. That seemed cleaner.

Frank asked if the drive might not be permitted in the future for an owner. Was there a provision to the potential buyer that said you could have a driveway in conformance to the subdivision plan where the driveway access had been laid out from the road, and it was just a matter of getting an approval and the details approved by Planning so it conformed to the environmental, slope requirements, drainage and all that? LaDana replied they could have a driveway. When it went through subdivision review, she assumed they looked at each lot having some type of driveway in some location. This [conditional use] was so they could disturb slopes in association with creating those driveways because some of the lots probably had slopes and they did have to disturb them to put in a driveway. If something open-ended was granted, those lot buyers wouldn't have to ask Planning for slope disturbance for the driveway. The Board could grant it today and keep it open-ended. Otherwise, when they came to build, if Planning didn't have that approval, the owners would have to ask for slope disturbance, which was a conditional use currently. Frank checked that the mitigation applied, period, regardless of the slope disturbance. LaDana said if [the Board] granted a new approval later if [the timeframe] wasn't left open-ended, there would be conditions on that approval which would probably be similar to the conditions already granted now. It would just depend on what the zoning said at that time.

Frank was concerned about a situation where a buyer bought a lot with relatively steep slopes and then found out he couldn't build a driveway because the 5-year slope disturbance approval had gone away and different rules applied. LaDana thought it wasn't so much that he couldn't do it—he'd just have to get the approval to do it. Especially with slope disturbance, they were just trying to make sure that someone wouldn't impact their neighbors, the roads and those kinds of things.

Don checked that LaDana was saying to keep [the approvals] together, it might be good to do a 3-year extension on both of them. Sue thought that seemed cleaner than an open-ended thing or two different dates. Sue observed that once the roads were in, and if the lots still hadn't sold, the driveways might not be there yet. That would sunset. LaDana agreed, unless they got an extension. Sue checked that they could still come back and get an extension for the driveways. LaDana replied potentially.

Paul asked if that would be necessary. Wouldn't the driveway be part of the zoning conformance? LaDana said if they needed to disturb slopes to put in the driveway, that wasn't a typical zoning conformance permit.

Paul didn't have an issue with that. He understood why [the developer] wanted this open-ended. He thought it was a little bit trivial to apply for and to deal with. Frank thought it would be reasonable to give the driveway a longer time period, maybe even 10 years. If the subdivision didn't sell, it was moot. Especially with the second house market, most people would take their time to plan it and it could reasonably be 10 years before they put in a driveway. He didn't know that he wanted to go open-ended. Sue said she didn't have a problem with extending the whole thing. If the roads got put in but the lots didn't sell, and the driveway [portion] sunset in 3 years, she didn't know if that mattered from a marketing or development standpoint. Frank thought it mattered. He'd been a realtor. He would put that as a disclosure to a buyer for ethics and for legal protection. He thought it would affect the marketability. Sue checked that knowing you had to come and get a conditional use permit for slope disturbance would affect that. Frank thought since [the conditional use] included mitigation measures to take care of erosion, etc., that if a person bought a lot and the slope disturbance [approval] was not in place, you'd have to tell the buyer that they'd have to go to the County and make sure they could get that directly. He would tell a buyer to locate the house, figure out the driveway and go to the County, and not to buy the lot until they were sure they could build on it.

LaDana pointed out an unusual thing that came up was that unless a realtor came to the County and asked the question, the buyer wouldn't get a copy of the Board of Adjustment approval. She wanted the Board to be aware of this. These weren't recorded with the Clerk & Recorder. The buyer would only know if the realtor or the buyer came and asked the question. Sue said another option was if the developer disclosed it at the time the buyer purchased the lot from the developer.

**Motion made by Paul Grinde to approve the extension with a change to condition #22b for 10-years instead of 5 years.** Sue asked if it would be better to set an actual date there. LaDana thought that might be easier. She suggested whatever time length the Board chose, from July 31, 2014. **Paul continued his motion, giving a date of 10 years from July 31, 2014, so July 31, 2024. Seconded by Don Patterson.** Specific wording of 22.b was discussed, so 22.b would read: Driveways: The Conditional Use approval...shall be valid until 7/31/24, with no extensions without further review...and the work must be completed by 7/31/24. (*Changes in condition #22.b are italicized and underlined for*

*clarity here in these minutes only.)* **Motion carried, all in favor.** Sue summarized that this was for a 3-year extension, with 10 years on the driveways. The road portion was extended for 3 years

**MONTANA FISH, WILDLIFE & PARKS PUBLIC HEARING—UPPER WEST SHORE (4:32 pm)**

Robert Costa presented the staff memorandum. (See attachments to minutes in the February 2014 meeting file for staff memorandum.) He highlighted that the Board's job tonight was to collect public comment regarding the proposed use and then take no further action.

Frank checked that the hearing had been advertised in advance. Robert confirmed. It was legally noticed in the Lake County Leader and adjacent property owners were notified of the request as well.

*Comment was opened:*

Park Manager Amy Grout and Project Engineer Kelly Williams were present on behalf of Fish, Wildlife and Parks. Amy explained this was to be a visitor contact station. It was a small building that was meant to help the visitors as they entered the park. Kelly outlined this would require some road widening. The road was currently 22 feet. They would widen it at the entry station to about 36 feet. They would have 12-foot lanes plus [inaudible] the station. It would require some slope work. Preliminary investigation indicated that it would be less than 2500 square feet of 25% slope that would require a conditional use. If that changed, they would be back.

*No other comments were offered. Public comment closed.*

**OTHER BUSINESS**

Sue welcomed the two new members, Don Patterson and Frank Mutch. Each introduced himself.

**Sue Lavery, chair, adjourned the meeting at 4:40 pm.**